



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

09/894,918	06/29/2001	Brian Jacoby	06975-203001/Security 14	5947
------------	------------	--------------	--------------------------	------

26171	7590	11/20/2006		
-------	------	------------	--	--

FISH & RICHARDSON P.C.
P.O. BOX 1022
MINNEAPOLIS, MN 55440-1022

EXAMINER

BOUTAH, ALINA A

ART UNIT	PAPER NUMBER
----------	--------------

2143

DATE MAILED: 11/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/894,918

Applicant(s)

JACOBY ET AL.

Examiner

Alina N. Boutah

Art Unit

2143

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 October 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) The period for reply expires 3 months from the mailing date of the final rejection.
b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) They raise new issues that would require further consideration and/or search (see NOTE below);
(b) They raise the issue of new matter (see NOTE below);
(c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. Applicant's reply has overcome the following rejection(s): _____.
6. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1,3-7,11,12,16,17,19,20,22-26,28,30,31,35,36,38,39,41-45,47,49,50,54,55 and 57-73.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. Other: _____.


DAVID WILEY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

Continuation of 11. does NOT place the application in condition for allowance because: In response to Applicant's argument that the proposed combination of Cox, Eichstaedt, Maher and Alcendor fail to teach the features of "monitoring, at the network device, at least the payload portion of the data packets directed from at least one of the access providers to at least one of the access requestors by scanning the payload portion for at least one predetermined pattern and counting a number of data packets having payload portions that include the predetermined pattern; and using the network device to deny subsequent data packets from the access requestor to the access provider" as claimed, the PTO respectfully submits that these are taught by the combinations as cited in the previous rejection. Cox teaches monitoring at the network device at least the payload portion of the data packet received by scanning the payload portion for at least one predetermined pattern (col. 3, lines 41-45). In similar art Eichstaedt discloses a method for automatically limiting access of a client computer to data objects accessed through a server computer wherein when a server receives a data request (packet) from a client machine over the network, the request values of the received request having a client identifier (pattern) matching a logged entry are calculated and compared to a predefined maximum request values. If the request values exceed a corresponding predefined maximum request value, the request is refused or denied (see Eichstaedt col. 6, lines 46-61). In a similar art, Maher discloses a payload analyzer that scans the contents of data packet's payload and attempts to match the payload contents against a database of known strings (col. 2, lines 64-66). In another similar art, Maher discloses a payload analyzer that scans the contents of data packet's payload and attempts to match the payload contents against a database of known strings (col. 2, lines 64-66). Lastly, Alcendor, which discloses limiting a number of login retries in a server, and rejecting the login attempt based on the number of login retries from the server to the client (see col. 7, lines 27-33).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).